

LAWRENCE A. LANDRY

IBLA 79-170

Decided April 10, 1979

Appeal from decision of the Nevada State Office, Bureau of Land Management, refusing to accept notices of location for mining claims. N MC 48521-48526.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Determination of Validity--Mining Claims: Recordation

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim located after Oct. 21, 1976, is void and any later filing of the notice is invalid.

APPEARANCES: Lawrence A. Landry, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lawrence A. Landry has appealed from a decision dated January 2, 1979, by the Nevada State Office, Bureau of Land Management (BLM), rejecting his mining claims certificates of location (Devil Fire B, C, D, E, F, & DA), because he failed to timely file the certificates N MC 48521, 48522, 48523, 48524, 48525 and 48526.

The pertinent regulation, 43 CFR 3833.1-2(b), provides that:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after

the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim * * *.

Failure to make a timely filing is "deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void." 43 CFR 3833.4(a). This regulation implements section 314 of the Federal Land Policy and Management Act of 1976, (FLPMA) 43 U.S.C. § 1744 (1976).

Appellant's claims were located on September 13 and 14, 1978, but the certificates of location were not filed with BLM until December 26, 1978.

In the statement of reasons, appellant admitted that the BLM filings were late. He noted that he erred by failing to differentiate between the location date and the filing date with respect to 43 CFR 3833.1-2(b). Nevertheless, he asserts that the error was inadvertent and was not designed to circumvent the regulation, as evidenced by the timeliness of seven other claims which he had previously submitted to BLM.

[1] For mining claims located after October 21, 1976, section 314(b) of FLPMA requires that a copy of the official record of location must be filed "within 90 days after the date of location." 43 U.S.C. § 1744(b), 43 CFR 3833.1-2. If a copy is not so filed, the claim is deemed abandoned and void, 43 CFR 3833.4, and any later filing is invalid. William E. Rhodes, 38 IBLA 127 (1978); G. Antolini & Son, 37 IBLA 13 (1978); Southwestern Exploration Associates, 33 IBLA 240 (1977); Solicitor's Opinion, M-36889, 84 I.D. 188 (May 17, 1977.)

In accordance with the statute and regulations, this Board has consistently affirmed BLM's refusal to record copies of the official record of location not filed within the statutory time limit. E.g., Robert Thompson, 34 IBLA 319 (1978); Southwestern Exploration Associates, supra.

Since the copies here were not filed with BLM within 90 days from the date of location as required by statute, they cannot be given force and effect and they were properly returned to appellant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur.

Newton Frishberg
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

